

Support Documentation
Petition 2004-22 - LCB File No. R 125-04

INTRODUCTION TO P2004-22

This petition contains proposed revisions to NAC 445B.001-.3497. The revisions are for four subject areas and are summarized below:

- The revisions integrate the latest federal New Source Review and Prevention of Significant Deterioration (NSR/PSD) provisions into the NAC. This is the majority of the petition.
- The revisions provide for changes to the nonattainment area provisions in response to Clark County's recent designation as basic nonattainment for the 8-hour ozone standard. This is in NAC 445B.308(4) (Section 26 of the petition).
- The revisions provide for the removal of repetitive requirements for public notification and participation in the processing of minor revisions to Class I operating permits in certain cases. This is in NAC 445B.3425 (Section 38 of the petition).
- The revisions provide for technical corrections, updates for the SIP and repealed sections for definitions no longer used. These are found in Sections 17-21, and 39 of the petition.

INTEGRATION OF LATEST FEDERAL NSR/PSD PROVISIONS INTO THE NAC

On December 31, 2002, EPA adopted a final rule, effective March 03, 2003 revising the federal New Source Review and Prevention of Significant Deterioration (NSR/PSD) program. These revisions affect major stationary sources subject to the NSR/PSD rule and are intended to provide greater flexibility for facilities proposing changes (modifications) to their operations without being subject to PSD. The federal NSR reform provisions consist of two major components:

- The expansion of existing federal regulations that had previously been specific to power plants to all PSD sources.
 - A "baseline actual emissions" procedure for calculating pre-change emissions.
 - An "actual-to-projected-actual" applicability test to determine if a change will result in a significant emissions increase, thereby subjecting the source to the PSD permitting requirements.
- Creation of a new program to provide flexibility to the federal NSR/PSD rule. The new provisions offer three options that will allow facilities to make

changes to their operations without triggering the PSD permitting requirements. In the enclosed petition, NDEP is proposing a new State application review and permitting process to accommodate the new federal flexibility options. The three new flexibility options include:

- **Clean Units (CU).** A CU is an emissions unit that meets certain criteria found in 40 CFR 52.21. There are two cases: Those units that have been through NSR review within the last five years and are complying with the emission control levels specified in their NSR permit, or those newer units that are operating in a manner that would satisfy those same control levels. Changes to a CU are not subject to PSD, if they do not cause a significant increase in emissions.
- **Pollution Control Projects (PCP).** The reform provisions contain a list of environmentally beneficial technologies that qualify as PCPs. Facilities installing these do not have to undergo PSD. Other projects may qualify as a PCP on a case-by-case basis.
- **Plantwide Applicability Limitations (PAL).** A PAL is based on plantwide actual emissions. If a facility keeps its emission below a plantwide actual emissions cap, it can avoid PSD when making alterations to the facility or individual emissions units. This option requires significant recordkeeping, monitoring and reporting.

The current application review and permitting process in Nevada provides two options, an operating permit program or an optional operating permit to construct program. We believe that, with the exception of a few minor changes to the existing permitting process, this flexible permitting process can also be retained for the federal NSR/PSD changes related to the first bullet above (i.e. facilities will retain the option to choose an operating permit or an operating permit to construct). For those changes for which a facility chooses to obtain an operating permit to construct and the conditions of the operating permit to construct would conflict with the conditions of an operating permit, we are proposing a new administrative revision procedure for the operating permit. This will allow concurrent review and approval of the operating permit to construct while revising the operating permit, thus streamlining the review process.

The second bullet above relates to the federal NSR/PSD operating flexibility changes (clean units, pollution projects and plant-wide applicability limits). Due to the complexity involved with these changes and the general nature of the duration of the permit authority, our existing operating permit program did not fit well. As a result, these federal NSR/PSD changes are proposed to be permitted only through the operating permit to construct regulations.

As a result, the majority of the petition deals with integrating the federal NSR revisions into State regulation. The changes proposed to NAC 445B include:

- Application content requirements for CUs, PCPs and PALs
- Application processing timelines for CUs, PCPs and PALs
- Permit content requirements for CUs, PCPs and PALs
- Additional fees to cover the costs for CUs, PCPs and PALs

Prior to the NSR Reforms, US EPA had delegated the authority to implement the federal NSR/PSD programs to the State. However, because the State regulatory framework was incompatible with the new federal provisions, the agency delegation was revoked on March 3, 2003. On June 3, 2003, the NDEP received partial delegation to issue PSD permits for new sources and modifications that do not use any of the new provisions under the NSR Reform rules. This partial delegation expires September 30, 2004. The regulation changes being proposed herein are necessary to regain full delegation of these federal programs before the partial delegation expires.

8-HOUR OZONE NONATTAINMENT AMENDMENTS

These amendments appear in Section 26 (pages 12-13) of the LCB petition. They are necessary as a result of new 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. On April 30, 2004, effective June 15, 2004, US EPA published nationwide attainment/nonattainment designations for the 8-hour ozone NAAQS. In this publication, US EPA recognized a new category of non-attainment area – the “basic” non-attainment designation. The current NAC regulations provide for requirements in other type of non-attainment areas. However, the offset and control requirements in the current regulations are more stringent than what is required for the new “basic” non-attainment designation. The proposed regulations provide specific criteria for new major stationary sources that are locating in or for sources making major modifications in an area designated as “basic” nonattainment for the 8-hour ozone standard.

STREAMLINING REQUIREMENTS FOR PUBLIC NOTIFICATION

These amendments appear in Section 38 (pages 31-32 of the LCB petition). They are a follow-up to an agreement made at the last SEC hearing with the Nevada Mining Association. NvMA supported P2003-7 last February with one exception. They objected to the proposed requirements for repetitive public notification and participation in the minor revision to Class I operating permits provisions. NDEP agreed to streamline these public notification requirements. The revisions limit public notification and participation to one time, occurring at the beginning of the minor revision process.

TECHNICAL CORRECTIONS, UPDATES AND DELETIONS

These are found in Sections 17-21, and 39 (deletion of unused definitions). The revisions to Section 17 update the list of abbreviations used in NAC 445B. Sections 18 and 19 correct NAC section references in the regulations dealing with sulfur emissions. Section 20 updates the “adopt by reference” regulation. Section 21 adds a provision dealing with the delivery of written notice to a source. Section 39 contains the text of definitions being repealed because they are no longer used in the NAC.

August 10, 2004